1620.

SUPREME COURT OF THE UNITED STATES.

No. 133.

THE UNITED STATES, Plaintiff in Error,

vs.

THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF MINNESOTA.

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SUPREME COURT OF THE UNITED STATES:

THE UNITED STATES OF AMERICA, Plaintiff in Error,
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY, Defendants in Error.

Writ of Error.

THE UNITED STATES OF AMERICA, ss:

The President of the United States of America, to the Chief Justice and Associate Justices of the Supreme Court of the United States for the Territory of Minnesota, greeting:—

Because in the record and proceedings, as also in the rendition of judgment in a plea which is in the said Supreme Court, before you, between the United States of America and the Minnesota and Northwestern Railroad Company, a manifest error hath happened, to the great damage of the said United States of America, as by their said complaint appears: And it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the fourth Monday of December, inst., in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this ninth day of
[SEAL.] December, in the year of our Lord one thousand eight hundred and fifty-four, and of the Independence of the United States the seventy-eighth.

GEO. W. PRESCOTT,
Clerk of the Supreme Court of the United States for the Territory of Minnesota.

TERRITORY OF MINNESOTA, ss:

I hereby allow the within and foregoing writ of error, December 9th, 1854.

WILLIAM H. WELCH,
Chief Justice of the Supreme Court of the United States for the Territory of Minnesota.

To the Chief Justice and Associate Justices of the Supreme Court of the United States of America:—

The return to this writ appears by the schedule hereto annexed. The answer of the Justices of the Supreme Court of the United States for the Territory of Minnesota within mentioned.

GEO. W. PRESCOTT,
Clerk of the Supreme Court of Minnesota Territory.

Pleas in the Supreme Court of the United States for the Territory of Minnesota, held at the Capitol in the city of St. Paul, before the Justices of the same Court, on the first Wednesday, being the 6th day of December, in the year 1854, to wit:—

THE UNITED STATES OF AMERICA, Appellants,
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY,
Appellees.

This day came the parties, by their attorneys, and thereupon this cause came on to be heard upon the transcript of the judgment and other papers, pleadings, and proceedings brought by appeal to this Court from the District Court of Goodhue County, to wit:—

TERRITORY OF MINNESOTA,
District Court, 1st District, Goodhue County:

THE UNITED STATES OF AMERICA
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

To the above named defendants, the Minnesota and Northwestern Railroad Company:

You are hereby summoned and required to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said complaint on the subscriber at his office, in the city of St. Paul and county of Ramsay, within twenty days after the service hereof upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will have his damages assessed by a jury, or the amount he is entitled to recover ascertained by the Court, or under its direction, and take judgment for the amount so assessed or ascertained.

Dated ST. PAUL'S, *October 23d*, 1854.

JOHN E. WARREN,
Att'y for Plff.

TERRITORY OF MINNESOTA,
District Court, First District, County of Goodhue:

THE UNITED STATES OF AMERICA
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

The complaint of the United States of America, the above named plaintiff respectfully shows to this Court, that the above named defendants, the Minnesota and Northwestern Railroad Company, are a body corporate, incorporated by, under, and by virtue of an act passed by the Legislature of the Territory of Minnesota, and capable in law of being sued and and impleaded in this action; that said defendants, on the 12th day of October, in the year 1854, and at divers other times between that day and the day of the commencement of this action, with force and arms, broke and entered a certain close of the plaintiff, being the tract or parcel of land called and known as section number three of township number one hundred and twelve north, situate and being in the County of Goodhue and Territory aforesaid, and then and there felled, cut down, prostrated, and killed the trees, to wit: five hundred oaks and five hundred other trees upon the said tract or parcel of land, and within the said close then growing and being, and took and carried away the same, and other wrongs then and there did to the damage of the plaintiff of ten hundred and ten dollars.

Wherefore the plaintiff demands that the defendants may be adjudged to pay the plaintiff damages to the sum of ten hundred and ten dollars, with the costs of this action.

JOHN E. WARREN,
Att'y for Pl'ff.

The within named defendants hereby accept due service of the within summons and complaint.

JOHN M. BARBOUR,
Agent of the Minnesota and Northwestern Railroad Company.

Oct. 23*d*, 1854.

TERRITORY OF MINNESOTA,
District Court, 1st District, Goodhue County:

THE UNITED STATES OF AMERICA
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

The answer of the above named defendants to the complaint of the plaintiff in this action, respectfully shows to this Court, that before the commission of the acts complained of in said complaint, or either of them, to wit: on the fourth day of March, in the year 1854, an Act was passed by the Legislature of the Territory of Minnesota,

and approved by the Governor thereof, in the following words and figures, that is to say:—

An Act to incorporate the Minnesota and Northwestern Railroad Company:

SECTION 1. Be it enacted by the Legislative Assembly of the Territory of Minnesota, That Robert Schuyler, William P. Burrall, George L. Schuyler, Morris Ketchum, Edward Bement, R. B. Mason and George W. Billings, of the city of New York; Erastus Corning, of the city of Albany; John M. Forbes, Curtis B. Raymond and John Gardner, of the city of Boston; W. B. S. Moore, of the city of Bangor, Maine, and Frederick S. Jesup, of the city of Dubuque, Iowa; and Franklin Steele, Charles W. Borup, Orange Walker, Alex. Wilkin, Willis A. Gorman, Alex. Ramsey, James Stinson, and J. Travis Rosser, of the Territory of Minnesota, and all such persons as shall hereafter become stockholders in the Company hereby incorporated, shall be a body politic and corporate, by the name and style of the "Minnesota and Northwestern Railroad Company," and under that name and style, shall be capable of suing and being sued, impleading and being impleaded, defending and being defended against, in law and equity in all Courts and places whatsoever, in like manner and as fully as natural persons; may make and use a common seal, and alter and renew the same at pleasure; and by their said corporate name and style, shall be capable in law of contracting, and being contracted with, shall be and are hereby invested with all the powers, privileges, immunities and franchises, and of acquiring by purchase or otherwise, and of holding and conveying real and personal estate, which may be needful to carry into effect fully the purposes and objects of this Act.

SEC. 2. That the corporators specifically named in the preceding section, shall meet in the city of New York, at the room of the Chamber of Commerce, in the Merchants' Exchange, on the next first Tuesday in the month succeeding that in which this act shall be passed, which said time of meeting shall be not less than thirty days, nor more than sixty days after the passage of said act. And it shall be the duty of said corporators, at their first meeting to determine whether or not they accept the charter, and if the same be accepted, to give notice immediately of such acceptance to the Governor of the Territory of Minnesota, by certificate to that effect, signed by the corporators present, but not under seal, properly addressed and deposited in the Post-office, in the city of New York. It shall also be the duty of the corporators, at their first meeting, to make such arrangements as may be proper and necessary, for the future meetings, for the organization of the Company, and the issue of capital stock.

SEC. 3. It shall be the duty of the above named corporators, within sixty days after the acceptance of this charter, to cause to be opened at some designated place in the city of New York, and in the

city of St. Paul, in this Territory, books for subscription to so much of the capital stock of said Company as they may deem proper, giving twenty days' notice thereof, in one or more public newspapers printed in the city of New York, and in the city of St. Paul aforesaid; and after a sum not less than one million of dollars of capital stock of said Company shall have been subscribed, and an instalment of not less than ten per cent. paid upon each share, then the subscribers shall become corporators of said Company, and shall, within thirty days thereafter, proceed to elect a Board of Directors, which shall consist of not less than twelve stockholders, citizens of the United States of America, and three of them shall reside in the Territory or future State of Minnesota; and said Directors, so elected, shall, within ten days thereafter, proceed to organize by the election of a President and such other officers as they may see fit to appoint; and until such organization, the corporate powers of said Company shall remain in and be exercised by the corporators hereinbefore specified.

SEC. 4. From and after the organization of the said Board of Directors, all the corporate powers of said Company shall be vested in, and controlled and exercised by said Board of Directors, and such officers and agents as they shall appoint; three of whom shall hold the office of director for one year; three others for two years; three others for three years, and the remaining three for four years; the time which each of the first Board of Directors shall hold his term of office to be determined by lot, within thirty days after the first organization of said Board. At the expiration of the term of one year from the organization of said Board, and every succeeding year thereafter, there shall be chosen three directors from among the stockholders of said Company; due notice of such election having been first given by the Board of Directors, to supply the vacancies of those who go out, and each director shall continue in office until his successor is elected and assumes the trust conferred on him; vacancies in the Board may be filled by a vote of two-thirds of the directors remaining; such appointees to continue in office until the next regular election of directors; but no person shall be so elected who shall not have been openly nominated at a meeting of the directors, at least one week before the time appointed for such election; other officers, agents and servants, whether members of the Board or otherwise, shall be entirely subject to the control of the Board. In every election of directors or for any other purpose, each share of capital stock shall be entitled to one vote, to be given in person or by proxy; a majority of the Board of Directors shall constitute a quorum for the transaction of business.

SEC. 5. The said directors shall have the power to make, ordain, and establish all such by-laws, rules and regulations, as may be deemed expedient and necessary to fulfil the purposes, and carry into effect the provisions of this act, and for the well ordering, regulating and securing the affairs and business of the Company, and such

by-laws, rules and regulations, shall have the force and effect of law; *Provided*, that the same may be not repugnant to the Constitution and laws of the United States, or repugnant to the laws of the Territory or future State of Minnesota, or to this act. The Board of Directors shall have power to establish such rates of toll for the conveyance of persons and property upon the railroad by this act authorized to be built, as they shall from time to time by their resolutions direct and determine; and to levy and collect the same for the use of the said Company; the transportation of persons and property, the width of track, construction of wheels, the form and size of cars, the weight of loads, and all other matters and things respecting the use of said road, and the conveyance of passengers and property, shall be exclusively within the control of said Board of Directors, and in conformity to such rules and regulations as they shall from time to time determine. Said Board of Directors may have power to hold its meetings in the city of New York, and to order and hold all elections for directors in said city.

SEC. 6. The capital stock of said corporation shall be ten millions of dollars, which may be increased from time to time to any sum not exceeding the entire amount expended on account of said road, divided into shares of one hundred dollars each, which shall be deemed personal property, and may be issued and transferred in such manner and at such places as may be ordered and provided by the Board of Directors, who shall have power to require the payment of sums subscribed by stockholders in such manner, and on such terms as they may deem proper; and on refusal or neglect on part of the stockholders or any of them, to make payments on the requisition of the Board of Directors, the shares of such delinquent may, after thirty days' public notice, be sold at public auction under such rules as the said Board of Directors may adopt; the surplus money, if any remains after deducting the payments due, with the interests and necessary costs of sale, to be paid to such delinquent stockholders: books for subscription to stock shall be opened by the Board of Directors in the city of New York and in the city of St. Paul, and may be opened in the city of London from time to time as said Board may order.

SEC. 7. The said corporation is hereby authorized and empowered to survey, locate, construct, complete, alter, maintain, and operate as a railroad, with one or more tracks or lines of rails, from a point on the northwest shore of Lake Superior, in Minnesota Territory, north of the St. Louis River, opposite the entrance of Lefthand River into Lake Superior, and near the mouth of the St. Louis River, Minnesota, on Lake Superior, by way of St. Anthony and St. Paul, in Minnesota, and cross the Mississippi at St. Paul to such point on the northern boundary line of the State of Iowa, as the Board of Directors may designate, which point shall be selected with reference to the best route to the city of Dubuque; *Provided*, That such location shall conform in all respects to such route as may

be designated in any act of Congress granting lands for the construction of said railroad.

SEC. 8. The said corporation shall have the right of way upon, and may appropriate to its sole use and control, for the purposes contemplated herein, by paying therefor in the manner hereinafter provided, land not exceeding two hundred feet in width, through its entire length, and may enter upon and take possession of and use all and singular, said lands, two hundred feet in width, and all streams, minerals, and materials of every kind thereon, for the location of depots and stopping stations, for the purpose of constructing bridges, dams, embankments, excavations, station grounds, spoil banks, turnouts, engine houses, shops, and other buildings necessary for the construction, completing, altering, maintaining, preserving and complete operation of said road. All such lands, waters, minerals, materials, and privileges belonging, or which may hereafter belong, to the Territory or future State of Minnesota, on and within said two hundred feet in width, are hereby granted to said corporation, for said purposes, and for no other; and for the purpose of aiding the said Company in the construction and maintaining the said railroad, it is further enacted, that any land that may be granted to the said Territory, to aid in the construction of the said railroad, shall be, and the same are hereby granted in fee simple, absolute, without any further act or deed, and the Governor of this Territory or future State of Minnesota, is hereby authorized and directed, in the name and on behalf of said Territory or State, after the said grant of land shall have been made by the United States to said Territory, to execute and deliver to said Company such further deed or assurance of the transfer of said property, as said Company may require, to vest in them a perfect title to the same: *Provided, however*, that such lands shall be taken upon such terms and conditions as may be prescribed by the act of Congress granting the same; *Provided, also*, That whenever the net earnings of said road shall exceed twenty per cent. on the amount of capital actually expended by said Company in the construction and furnishing said road and appurtenances, the said Corporation shall pay semi-annually to the Treasurer of the Territory or future State of Minnesota, and take his receipt for the same, seven per cent. of the said net earnings of said railroad.

SEC. 9. Said Company may take such lands for the construction of said road as may be deemed requisite by said Corporation; but unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid, proper compensation for the lands so taken shall be made, which shall be ascertained and determined in the manner following: The said party or parties interested may present to the Circuit, or District, or County Court of the circuit, or district, or county where said lands or real estate proposed to be taken shall lie, a petition, signed by its attorney or agent, describing with convenient accuracy and certainty, by map or otherwise, the lands or real estate

so required to be taken as aforesaid, setting forth the name and residence of each owner, or other person interested therein as owner, lessee, incumbrancer, as far as known to such attorney or agent, or appearing of record, and praying the appointment of Commissioners to ascertain the compensation to be made such owners and others interested, for the taking or injuriously affecting such land or real estate as aforesaid. The Court shall have satisfactory evidence that notice of an intended application, and the time and place thereof, for the appointment of Commissioners of appraisement between said Corporation and the owners and persons interested in such lands and real estate, had been given at least ten days previously to such owners personally, or to their agent or attorney, at their residence, or on the premises, or by publication thereof for four weeks previous to such application, in a newspaper printed in the county in which said lands or real estate may be; or if no newspaper be printed in said county, in a newspaper printed at the capital of this territory, and also in a newspaper published at the shortest distance within said territory of State, from the place where the said land lies; such publication to be allowed only in respect to owners who shall appear by affidavit to have no residence in the county known to such agent or attorney, whereat such notice could be delivered as aforesaid. The Court may adjourn the proceedings from time to time; it may direct any future notice thereof to be given that may seem proper; it shall take proofs and allegations of all parties interested, touching the regularity of the proceedings, and shall, by an entry in its minutes, appoint three competent and disinterested persons, who shall be freeholders of said county, Commissioners, to ascertain such compensasation as aforesaid, specifying in such entry a time and place for the first meeting of such Commissioners. The said Commissioners, before entering upon the duties of their office, shall take the oath required by the laws of this territory, or the future State of Minnesota, and any one of them may administer oaths to witnesses produced before them, and may adjourn from time to time. Whenever they shall meet to hear proofs and allegations, unless by appointment of the Court, or pursuant to adjournment, they shall cause ten days' previous notice of such meeting to be given to the said owners or parties interested, or their attorney or agent, and may, each of them, issue subpœnas, and compel witnesses to appear and testify; they shall hear the proofs and allegations of the parties, and any three or more of them, after reviewing the premises, without fear or favor, or partiality, ascertain and certify the compensation proper to be made to the said owners and parties interested, for the lands or real estate to be taken, as well as all damages accruing to the owner of the lands and real estate aforesaid, taken in consequence of the condemnation of the same, or injuriously affected as aforesaid, may in their discretion assess a separate reasonable sum in favor of such owner and parties interested, or of any person appointed by the Court to appear as attorney for them, for costs, expenses, and reasonable counsel fees. They, or a majority of them,

shall make, subscribe, and file with the Clerk of the county in which such lands or real estate shall lie, a certificate of their said ascertainment and assessment, in which such lands or real estate shall be described by map or otherwise, with convenient accuracy and certainty. The Court, upon such certificate, and due proof that such compensation and separate sum, if any be certified, have been paid to the parties entitled to the same, or have been deposited to the credit of such parties in the State Treasury, or other place for that purpose, approved by the Court, shall make, and cause to be entered in its minutes, a rule describing such lands or real estate in manner aforesaid, such ascertainment or compensation, with the mode of making it, and such payment or deposit of same compensation as aforesaid, a certified copy of which rule shall be recorded and indexed in the proper recording office, in like manner, and with the like effect, as if it were a deed of conveyance from the said owners and parties interested to said corporation. Upon the entry of such rule, the said corporation shall become seized in fee of all lands and real estate described in said rule, as required to be taken as aforesaid, during the continuance of the corporation, by this or any subsequent act, and may take possession of, and hold, and use the same for the purposes of said road, and shall thereupon be discharged of all claims for any damages, by reason of any matter specified in said petition, certificate, or rule of said Court. If, at any time after an attempt or actual ascertainment or compensation, under this or any other act, or any purchase by, or donation to said corporation of any lands for the purposes aforesaid, it shall appear that the title acquired thereby to all or any part of such lands, for the use of said road, or if the title of said corporation shall fail or be deemed defective, the said corporation may proceed anew to perfect such title by procuring an ascertainment of the compensation proper to be made to any person or persons, whose title, claim, or interest in, or lien upon such land; and by making payment thereof in the manner hereinafter provided, as near as may be, and at any stage of such proceedings, or of any proceedings under this act, the Court or officer to whom the application shall be made may, by a sale in that behalf made, authorize the said corporation, if already in possession, and if not in possession to take possession of and *and* use such premises during the pendency, and until the final conclusion of such proceedings, and may stay all actions and proceedings against said corporation on account thereof: *Provided*, such corporation should pay a sufficient sum into Court, or give security to be approved by said Court, to pay the compensation in that behalf, when ascertained; and in every case where possession shall be authorized, it shall be lawful for the owners to conduct the proceedings to a conclusion, if the same shall be delayed by the Company. The said Commissioners shall be entitled to receive from said corporation a compensation not exceeding five dollars for each day actually employed by them in the discharge of their duties; such compensation to be taxed and allowed by the Court, and which shall be paid by such corporation. If any Commissioners so appointed

shall die, be unable, or fail to serve, the Court may appoint another in his place, or reasonable notice of the application, to be approved by the Court. The proceedings hereby authorized, may be had in the District Court of any county where the lands lie, and all motions to the District Court shall be made at a general or special term thereof in said county. The said Commissioners shall file the said certificate in the office of the Clerk of the District Court of the county where the lands to be affected may lie; and any Clerk shall, when presented with an order from the Court for that purpose, transfer a certified copy of the same, and the proceedings connected therewith, to the Clerk of any other county in which any portion of the lands to be affected may lie, whenever such Clerk shall be so required by said corporation, its agent or attorney.

SEC. 10. For the purpose of raising funds from time to time, for the construction and completion of said road, and the purchase of iron and other materials to be used thereon, and for other purposes connected with the construction and completing of said road, said Company may issue its bonds in such form, and for such amounts, and at such rates of interest, payable at such time and places as the said Board of Directors may, by their by-laws, direct. The payment of said bonds may be secured by a deed of trust, or mortgage of the franchise, lands, road, and materials belonging to said Company, or all or either of them: *Provided*, That the faith of the Territory or future State of Minnesota, shall be in nowise pledged for the redemption of said bonds, and that no banking privileges are hereby granted to said Company.

SEC. 11. If any person shall carelessly, wilfully, maliciously, or wantonly delay or obstruct the passage of any carriage on said road, or shall place or cause to be placed, any material thereon, or in any way trespass upon, spoil, injure, or destroy said road, or any part thereof, or anything belonging or pertaining thereto, or employed or used in connection with their location, survey, construction, or management; all persons committing, or aiding and abetting in the commission of such trespass or offence, shall forfeit and pay to said Company treble such damages as shall be proved before any Court of competent jurisdiction, and shall be imprisoned until the payment thereof, unless sooner discharged by due proceedings of law; and further, such offenders shall be liable to indictment in the county within whose jurisdiction the offence may be committed, and pay a fine of not less than thirty, nor more than one thousand dollars, to the use of the people of the Territory and future State of Minnesota; or may be imprisoned in the penitentiary or jail, for a term not exceeding five years, in the discretion of the Court, before whom the same shall be tried.

SEC. 12. Said corporation may construct their said road over or across any stream of water, watercourse, road, highway, railroad, or canal, not, however, in such manner as to interrupt or impede the navigation of any navigable stream or highways; and all roads or

railroads, laid out subsequently to the completion of any part of the said railroad, which may cross or intersect the same, shall be laid out and constructed at the point of intersection, in a manner that will do the least damage to said railroad. Whenever the track of said railroad shall cross a road or highway, such road or highway may be crossed at grades, or carried under or over such track, as may be found most expedient; and in case where an embankment or cutting shall make a change in the line of such road or highway desirable, with a view to a more easy ascent or descent, the said Company may take such additional lands for the construction of such road or highway as may be deemed requisite by said corporation, unless the lands so taken shall be purchased or voluntarily given for the purposes aforesaid. Compensation shall be ascertained in the manner in this Act provided, and duly made by said corporation to the owners and persons interested in such lands. The same, when so taken, or compensation made, to become a part of such intersecting road or highway, in such manner and by such tenure as the adjacent parts of the same highway may be held for highway purposes: *Provided*, That the present, or any subsequent Legislature of the Territory or future State of Minnesota, may authorize any railroad or highway to cross or intersect the said railroad, on such terms as will do the least damage to said Railroad Company.

SEC. 13. Every conductor, baggage-master, engineer, brakeman, or other servant of such Corporation, employed in a passenger train, or at stations for passengers, shall wear upon his hat or cap a badge, which shall indicate his office, initial letters or style of the Corporation. No conductor or collector, without such badge, shall demand, or be entitled to receive from any passenger any fare, toll, or ticket, or exercise any of the powers of his office; and no other of said officers or servants, without such badge, shall have any authority to meddle or interfere with any passenger, his baggage, or property.

SEC. 14. A bell of at least thirty pounds weight or a steam whistle shall be placed on each locomotive engine, and shall be rung or whistled at the distance of at least eighty rods from the place where said road shall cross any other road, and be kept ringing or whistling, at intervals, until it shall have crossed said road or street, under a penalty of fifty dollars for every neglect, to be paid by said corporation, one-half thereof to go to the informer, and the other half to the Territory or future State of Minnesota, and to be liable for all damages which shall be sustained by any person, by reason of such neglect. Said corporation shall cause boards to be placed, well supported by posts or otherwise, and constantly maintained across each public road or street, where the same is crossed by the railroad, on such elevation as not to obstruct the travel, and to be easily seen by the travellers, and on each side of said board shall be painted in capital letters, of at least the size of nine inches each, the words, "*Railroad crossing! Look out for the cars!*" But this provision shall not apply to streets of cities or villages, unless the corpo-

ration be required to put up such boards by the officers having charge of such streets. Said Company shall construct and maintain a good substantial board or rail fence, five and one-half feet high, along said railroad, in the line of the lands by this act granted them, and shall construct and maintain cattle guards, wherever the same may be necessary, sufficient to keep cattle, sheep, horses and hogs from off the track of said railroad, and shall be liable for all damage sustained by any person, by reason of any neglect to keep and maintain such fence and cattle guard in good repair.

SEC. 15. Said corporation shall within a reasonable time after said road shall have been permanently located, cause to be made a map and profile thereof, and of the lands taken and obtained for the use of said road, and file the same in the office of the Secretary of the Territory, or of the future State of Minnesota, and also like map of the parts thereof located in the different counties through which the same may pass, and cause the same to be recorded in the office for recording deeds, in the county in which said parts of said road shall lie, and also where any re-location of said line or lines may have been made, as hereinbefore authorized, then a like map, or profile thereof, shall be made and filed in the manner and places aforesaid.

SEC. 16. This act, and all grants herein contained, shall be void, unless said Company shall render to the Governor of this Territory, on or before the first day of January of each and every year, a statement in writing, verified by the oath of the President and Treasurer of said Railroad Company, exhibiting the amount of capital actually expended by said Company in the construction of said road, and the machinery therefor, and appurtenances thereunto belonging, the amount of their receipts and their expenditures during the year; and unless said Board of Directors shall be organized on or before the first day of July, 1854, and unless said Company shall construct and complete at least fifty miles of the track of said main road, from the point on Lake Superior designated in this act as the starting point for said road, within three years after the acceptance of this charter, as provided in this act, and the whole of said main road within three years thereafter, and the whole of the track of the said main road shall be laid with a rail not less than sixty pounds per yard, and the engines and rolling stock of the road shall be made in all respects equal to those on the best description of road in the United States; and unless said Company shall construct, complete, and maintain and keep in operation, a line of telegraph from Dubuque to St. Paul, upon the route of said road within twenty months after the formation of the first Board of Directors under this act.

SEC. 17. All acts or parts of acts that in any manner conflict with this act or the rights and franchises hereby granted, are hereby repealed. *Provided*, said Company accept this charter in manner and form as provided in Section 2. *And provided, also*, that nothing herein contained shall be so construed as to repeal or in anywise vitiate any charter for the construction of any bridge across the Mis-

sissippi River. *And provided, further*, that the passage of this act shall not vitiate or render void any railroad charter heretofore granted by this Legislative Assembly of this Territory.

SEC. 18. This Act shall be deemed a public Act, and shall be in force from and after its passage.

SEC. 19. In case the persons incorporated by this Act shall fail or neglect to accept the provisions of the same, and comply with its conditions within the time and in the manner herein prescribed, the same may be accepted by any other company which shall be approved by the Governor, Auditor, and Treasurer of this Territory, who, upon complying with the terms and conditions of this Act, shall be vested with all rights, powers, and immunities conferred upon the corporators herein named, and shall be subject to all the liabilities in the said Act set forth, in as full, ample, and complete a manner as if their names were inserted as corporators in this Act.

N. C. D. TAYLOR,
Speaker of the House of Representatives.

S. B. OLMSTEAD,
President of the Council.

Approved March 4, 1854.

W. A. GORMAN.

Which Act has not been repealed nor modified, but at the time of the said alleged trespasses, and each of them, was, and now is, in full force.

That after the passage and approval of the said Act as aforesaid, and on the first Tuesday in the month of April, eighteen hundred and fifty-four, being the month next succeeding that in which the said Act above mentioned was passed, and not less than thirty nor more than sixty days after such passage, the corporators named in the first section of the said Act met in the city of New York, at the room of the Chamber of Commerce, in the Merchants' Exchange, being the first meeting of the said corporators, and then and there determined that they would, and they then did, accept the said charter, and immediately and upon the same day gave notice of such acceptance to the then Governor of the Territory of Minnesota, by certificate to that effect, signed by the corporators present at the said meeting, but not under seal, properly addressed to "His Excellency Willis A. Gorman, Governor of the Territory of Minnesota, at St. Paul's, Minnesota, where the said Governor then resided, and deposited upon the same day, in the Post-office in the city of New York; and that at the same first meeting the said corporators made such arrangements as were proper and necessary for the future meetings for the organization of the said Company and the issue of capital stock; that is to say: the said corporators then and there appointed a committee consisting of three of their number, to wit: Alexander Ramsey, George W. Billings, and Curtis B. Raymond, and authorized

and empowered the said committee to open books for subscription to one million dollars of the capital stock of the said Company, to be opened at the office of Borup and Oakes, in the city of St. Paul, and at the Bank of the Republic, in the city of New York, on the first day of May, eighteen hundred and fifty-four, and to receive such subscriptions and an instalment of ten per cent. upon each share, and gave twenty days' notice thereof in two public newspapers printed in the said city of New York, and in the said city of St. Paul; and at the same time further authorized and empowered the said committee to call future meetings of the said corporators, and the persons who should become subscribers to the capital stock of the said Company.

That on the said first day of May, 1854, books of subscription to the capital stock of the said Company were, on the said first day of May, 1854, opened by and under the direction of the said committee at the office of Borup & Oakes, in the city of St. Paul, and at the Bank of the Republic in the city of New York.

That after the opening of the said books as aforesaid, and on or about the twentieth day of May, eighteen hundred and fifty-four, subscriptions were duly made upon the said book at St. Paul to the amount of two hundred dollars; and twenty dollars, being ten per cent. of the amount of the said subscriptions, was, at the time of the making thereof, duly paid by the said subscribers to the said committee.

That afterwards, and on the 29th day of June, eighteen hundred and fifty-four, an act was passed by the Congress of the United States, and duly approved by the President thereof, and became and was, and now is a law, in the following words, that is to say:—

An Act to aid the Territory of Minnesota in the construction of a railroad therein.

SEC. 1. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That there be and is hereby granted to the territory of Minnesota, for the purpose of aiding in the construction of a railroad from the southern line of said territory, commencing at a point between township ranges nine and seventeen, thence by the way of St. Paul by the most practicable route, to the eastern line of said territory, in the direction of Lake Superior, every alternate section of land, designated by odd numbers, for six sections in width on each side of said road, within said territory; but in case it shall appear that the United States have, when the line of said road is definitively fixed by the authority aforesaid, sold any section, or any part thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said Territory, subject to the approval of the Secretary of the Interior, to select from the lands of the United States, nearest to the tier of sections above specified, so much land in alternate sec-

tions or parts of sections as shall be equal to such lands as the United States have sold, or to which the right of pre-emption has attached as aforesaid, which land (thus selected in lieu of those sold, and to which pre-emption has attached as aforesaid, together with the sections or parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid), shall be held by the Territory of Minnesota for the use and purposes aforesaid: *Provided*, that the lands to be so located shall in no case be further than fifteen miles from the line of the road in each case, and selected for and on account of said road: *Provided, further*, that the lands hereby granted shall be exclusively applied to the construction of that road for which it was granted and selected, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatever: *And provided, further*, that any and all lands heretofore reserved to the United States by an act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, be and the same are hereby reserved to the United States from the operation of this Act, except so far as it may be found necessary to locate the route of said railroad through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

SEC. 2. And be it further enacted, That the sections and parts of sections of land, which by such grants shall remain to the United States, within six miles on each side of said road, shall not be sold for less than double the minimum price.

SEC. 3. And be it further enacted, That the said lands hereby granted to the said Territory, shall be subject to the disposal of any Legislature thereof, for the purpose aforesaid and no other; nor shall they enure to the benefit of any company herebefore constituted and organized; and the said railroad shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States; nor shall any of said lands become subject to private entry until the same shall have been first offered at public sale at the increased price.

SEC. 4. And be it further enacted, That the lands hereby granted to said Territory shall be disposed of by said Territory only in the manner following: that is to say, no title shall vest in the said Territory of Minnesota, nor shall any patent issue for any part of the lands hereinbefore mentioned, until a continuous length of twenty miles of said road shall be completed through the lands hereby granted; and when the Secretary of the Interior shall be satisfied that any twenty miles of said road are completed, then a patent shall issue for a quantity of land not exceeding one hundred and twenty sections, and included within a continuous length of twenty miles of said road; and so, from time to time, patents shall be issued in like manner upon the completion of each additional twenty miles

of said road until it shall be completed; and if said road is not completed within ten years, no further sale shall be made, and the land unsold shall revert to the United States.

SEC. 5. And be it further enacted, That the United States mail shall be transported at all times on said railroad under the direction of the Post-office department, at such price as Congress may by law direct: *Provided*, that until such price is fixed by law, the Postmaster-General shall have the power to determine the same.

Approved, June 29, 1854.

That after the passage of the act last above mentioned, and on the thirtieth day of June, eighteen hundred and fifty-four, subscriptions to the capital stock of the said railroad Company were duly made upon the said books which had been opened in the city of New York as aforesaid, to the amount of one million dollars, and an instalment of ten per cent. upon each share of the stock so subscribed was, at the time of the making of such subscription, duly paid by the persons making the same to the said committee.

That after the said subscriptions had been made, and the said instalments had been paid as aforesaid, and on the first day of July, 1854, all the persons who had subscribed to the capital stock of the said Company, upon the book so opened in the city of New York, met together in the said city in pursuance of notice previously given by the said committee, and proceeded to and did duly elect twelve of the stockholders of the said Railroad Company, who were then citizens of the United States of America, and three of whom then resided in the said Territory of Minnesota, to be the directors of the said Company; and that, immediately thereafter, and upon the same first day of July, 1854, the said directors so elected proceeded to and did organize by the election of a President and other officers, and then and there duly elected a President, Vice President, Secretary, Treasurer, and counsellor of the said Company, and that within ten days thereafter, each and all the said officers so elected, duly accepted their said several offices, and respectively entered upon the discharge of the duties thereof.

That afterwards, and on the tenth day of October, eighteen hundred and fifty-four, these defendants caused a survey to be made of the route of the said railroad contemplated by and mentioned in the said act of the Legislature of the Territory of Minnesota, and located such railroad upon a route commencing at a point upon the southern line of the said Territory, between ranges nine and seventeen, designated by the Board of Directors of the said Company, with reference to the best route to the city of Dubuque, thence running to and crossing the Mississippi River at St. Paul, and thence, by the most practicable route, and by the way of St. Anthony, to the eastern line of the said territory, in the direction of Lake Superior, and thence to a point on the northwest shore of Lake Superior in Minnesota Territory, north of the St. Louis River, opposite the entrance of Lefthand

River into Lake Superior, and near the mouth of the St. Louis River, Minnesota, on Lake Superior, being the same railroad route contemplated by and mentioned in the said acts of Congress, and of the said territorial Legislature, and so located the same that such location conformed and conforms, in all respects, to the route designated by the said act of Congress, and by the said act of the territorial Legislature; that such location is so made between St. Paul and the southern line of said territory; that the said railroad is located upon, over, and across, and includes the land upon which the alleged trespasses mentioned in the complaint in this action are therein stated to have been committed; the said land being a portion of one of the sections granted to the territory of Minnesota in and by said act of Congress.

That after such survey and location were made as aforesaid, and on the 12th day of October, eighteen hundred and fifty-four, and at divers other times between that day and the day of the commencement of this action, the defendants, by and with their necessary agents, officers and servants, did go upon that part of the tract of land mentioned and described in the complaint in this action upon and over which the said railroad was and is located, as aforesaid, and upon no other part of the said land, for the purpose of constructing the said railroad, as the said defendants lawfully might do, and then and there, within the proper and necessary width of the track of the said railroad, as they had the lawful right to do, did cut down and prostrate the trees in the complaint in this action mentioned, and carefully removed the same from the said track, doing no unnecessary damage to the plaintiff, such cutting down, prostration, and removal being incident and necessary to the construction of the said railroad there, and that such cutting down, prostrating and removing, and no other, are the several supposed trespasses in the complaint mentioned.

RICE, HOLLINSHEAD & BECKER,
Att'ys for Def'ts.

TERRITORY OF MINNESOTA,
District Court, 1st District, Goodhue County.

THE UNITED STATES OF AMERICA
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

The reply of the plaintiff to the answer of the defendants in this action, respectfully shows to this Court—

That after the Directors and officers of said Company were elected and entered upon the discharge of their duties, as mentioned in the said answer, and before the said trespasses or any of them were committed, to wit: on the fourth day of August in the year 1854, an act was passed by the Congress of the United States, and approved by the President thereof, in the following words, to wit:—

An act for the relief of Thomas Bronaugh, and for the repeal of the "Act to aid the Territory of Minnesota in the construction of a railroad therein," approved the twenty-ninth day of June, eighteen hundred and fifty-four.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Interior is hereby directed to increase the pension of Thomas Bronaugh, who is now on the rolls at four dollars, to the rate of eight dollars per month, to commence January first, eighteen hundred and fifty-four.

SEC. 2. And be it further enacted, That the bill entitled "An act to aid the Territory of Minnesota in the construction of a railroad therein," which passed the House of Representatives on the twentieth day of June, eighteen hundred and fifty-four, and which was approved by the President of the United States on the 29th day of June, eighteen hundred and fifty-four, be, and the same is hereby repealed.

Approved August 4, 1854.

JOHN E. WARREN,
U. S. Dist. Att'y.

TERRITORY OF MINNESOTA,
District Court, 1st District, Goodhue County.

THE UNITED STATES OF AMERICA
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

The defendants demur to the reply of the plaintiff in this action, and say, that the matters therein alleged are not sufficient to entitle the plaintiff to maintain this action against the defendants, because they say that the act of Congress mentioned and set forth in said reply is void, and of no effect so far as it relates to the repeal of the act of Congress, approved June 29th, 1854, mentioned and set forth in the answer of the defendants.

RICE, HOLLINSHEAD & BECKER,
Att'ys for Def'ts.

TERRITORY OF MINNESOTA,
The District Court, 1st Judicial District, Goodhue County.

THE UNITED STATES OF AMERICA
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

This cause having been argued by Mr. Wilkinson and Mr. Rice, of counsel for the defendants, in support of the demurrer to the plaintiff's reply in this action, and by Mr. Brisbin, of counsel for the plaintiff in opposition thereto, and due deliberation being had by the Court:

It is ordered that said demurrer be and the same is hereby allowed, and that judgment be entered for the defendants herein.

Dated Nov. 4th, 1854.

W. H. WELCH,
Ch. Justice.

TERRITORY OF MINNESOTA,
The District Court, 1st Judicial District, County of Goodhue.

THE UNITED STATES OF AMERICA
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

This cause having been tried by the Court, the Hon. William H. Welch, Chief Justice of the Supreme Court, and Judge of the said District Court presiding, on the issue of law joined by the demurrer of the defendants, and the decision in writing of the said Chief Justice, &c., in favor of the said defendants, and allowing such demurrer having been filed:

Now, on motion of Rice, Hollinshead, and Becker, attorneys for said defendants, it is adjudged that the United States of America, the plaintiff, take nothing by this action, and that the Minnesota and Northwestern Railroad Company, the defendants, go thereof without day.

Dated, Nov. 9th, 1854.

P. SANFORD, *Clerk.*

TERRITORY OF MINNESOTA,
The District Court for the First Judicial District, Goodhue County.

THE UNITED STATES OF AMERICA
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

Take notice, that the plaintiff appeals to the Supreme Court of the Territory of Minnesota, from the judgment entered in this action in the District Court for the First Judicial District, and county of Goodhue, on the ninth day of November, 1854, in favor of the defendants and against the plaintiff, to the effect that the plaintiff take nothing by said action, and that the defendants go thereof without day; and also, from the order made in said action allowing the demurrer to the plaintiff's reply, and directing judgment to be entered for the defendants in this action, bearing date the 4th day of November, 1854, and entered on the day first aforesaid.

Dated St. Paul, November 20th, 1854.

J. E. WARREN,
Att'y for Pl'ff.

To RICE, HOLLINSHEAD, and BECKER,
Def'ts' Attorneys.

And to P. SANFORD,
Clerk of said District Court.

And the plaintiff, by his counsel, made and submitted the following points, to wit:—

SUPREME COURT.

THE UNITED STATES OF AMERICA
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY.

First. No title to the lands granted by Congress, by the act of June 29th, 1854, vested in the Territory of Minnesota, or could vest.

Second. The defendants acquired no rights under the act of incorporation and the act of Congress.

Third. No rights having vested, Congress could resume its grant, and the repealing act was valid and effectual.

And thereupon the defendants, by their counsel, assigned the following points, to wit:—

First. By the act of Congress, approved June 29th, 1854, granting certain lands to the Territory of Minnesota, to aid said Territory in constructing a railroad, the Territory *eo instanti*, upon the passage of the act, acquired an interest and property in the lands granted, which the Territory could grant and convey.

Second. By the act of the Legislature of Minnesota, approved March 4th, 1854, incorporating the "Minnesota and Northwestern Railroad Company," the said Company acquired an interest and property in all the lands subsequently granted by Congress to the Territory, for the purposes of the road, which interest became vested in said Company immediately upon the passage of the act of Congress and the organization of the Company.

Third. The 2d Section of the act of Congress, passed August 4th, 1854, repealing the first mentioned act of Congress, is repugnant to the Constitution of the United States, and also to great and fundamental principles which have been recognized as binding from time immemorial, wherever the common law prevails.

And the same was argued by counsel.

Whereupon the court adjourned until to-morrow at 12 o'clock, noon.

THURSDAY, *Dec. 7th*, 1854.

Court met pursuant to adjournment.

Court adjourned until to-morrow morning at 9 o'clock.

FRIDAY, *Dec. 8th*, 1854.

Court met pursuant to adjournment.

THE UNITED STATES OF AMERICA, Appellants,
against
THE MINNESOTA AND NORTHWESTERN RAILROAD COMPANY,
Appellees.

This day came the parties by their attorneys, and, mature deliberation having been had upon the matters at issue in this cause, and herein assigned for error, and to this Court appealed from, it appears to the Court here, that in giving the judgment and order aforesaid, in the District Court aforesaid, there is no error. Therefore it is considered that the order and judgment thereon aforesaid, in form aforesaid, be in all things affirmed.

GEO. W. PRESCOTT,
Clerk Sup. Ct.

SUPREME COURT OF THE UNITED STATES,
for the Territory of Minnesota, ss:

I, George W. Prescott, Clerk of said Court, do hereby certify that the foregoing is a true transcript of the record, proceedings, and judgment of said Court, in the cause therein entitled, "The United States of America, appellants, against The Minnesota and Northwestern Railroad Company, appellees," as appears by the records and files of said Court in my office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said Supreme Court, this 9th day of December, A. D. 1854.

GEORGE W. PRESCOTT,
Clerk Sup. Ct.

Filed 21st Dec. 1854.